

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-2479
Issued: June 11, 2009**

Appearances:

James R. Linehan, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 27, 2008 appellant filed a timely appeal from a June 26, 2008 decision of the Office of Workers' Compensation Programs that denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was totally disabled for the periods June 16 to July 17, 2006 and October 14, 2006 to April 12, 2007.

On appeal, counsel argues that the condition of cervical facet arthropathy should be added to the accepted conditions and that the June 26, 2008 Office decision provided insufficient discussion of the medical evidence of record.

FACTUAL HISTORY

On April 5, 2006 appellant, then a 39-year-old former grounds landscaper/labor leader, filed a Form CA-2, occupational disease claim, alleging that landscaping duties caused severe

carpal tunnel syndrome. His supervisor, Paul L. McCarty, noted that appellant no longer performed groundskeeper or landscaping duties and was working limited duty at that time, estimating and planning small construction projects. Appellant's previous supervisor, Richard D. Wright, noted that his job changed in October 2005 to general construction helper. On May 3, 2006 the Office accepted that appellant sustained employment-related bilateral carpal tunnel syndrome.

On November 8, 2006 appellant filed a Form CA-7, claim for compensation, commencing June 16, 2006. He submitted reports from Dr. James A. Rosacker, Board-certified in orthopedic surgery. In treatment notes dated May 19 and 24, 2006, Dr. Rosacker diagnosed bilateral carpal tunnel syndrome and bilateral cervical facet arthropathy. He noted physical findings and advised that appellant would be totally disabled for an additional week and would need right carpal tunnel decompression surgery. On June 2, 2006 Dr. Rosacker noted that appellant had eye surgery for a pterygium. He submitted additional reports advising that appellant remained symptomatic with right carpal tunnel symptoms and needed surgery. On July 18, 2006 appellant underwent right carpal tunnel decompression surgery. On October 13, 2006 Dr. Rosacker reported that he had right cervical facet arthropathy and bilateral carpal tunnel symptoms, more on the left than right. He advised that appellant could begin light duties with a five-pound lifting restriction, no overhead reaching on the right and no forceful or repetitive gripping. On October 16, 2006 Dr. Rosacker reported that appellant had minimal carpal tunnel symptoms but increasing pain involving the right cervical, trapezius and parascapular region, suggestive of cervical facet syndrome. He recommended magnetic resonance imaging (MRI) scan testing. In reports dated October 27 and November 11, 2006, Dr. Rosacker advised that appellant continued with symptoms of cervical facet arthropathy and recommended MRI scan testing. On November 16, 2006 he advised that appellant remained under his care for treatment of bilateral carpal tunnel syndrome and recommended that cervical facet arthropathy be added to his accepted conditions, noting that appellant had neck symptomatology at the time of his initial visit on May 5, 2006 and that his strenuous duties as a landscaper/carpenter were the inciting factors in this condition. Dr. Rosacker stated that appellant was totally disabled from May 2006 until October 13, 2006 when he was released for light work, but was again placed on total disability on October 27, 2006 due to increasing upper extremity symptoms and noted that he could need left carpal tunnel decompression surgery. He subsequently advised that appellant remained symptomatic with neck, right shoulder and arm pain and provided disability slips dated December 15, 2006 to April 13, 2007. January 4, 2007 electromyography (EMG) and nerve conduction studies (NCS) of the right upper extremity were read as suggestive of mild or early carpal tunnel syndrome.

By decision dated April 12, 2007, the Office denied appellant's claim for compensation for the period June 16 to July 17, 2006 or after October 14, 2006. It found that appellant was entitled to compensation for the period July 18 to October 13, 2006 but that the medical evidence was insufficient to establish that he was totally disabled for the additional periods due to his accepted condition.

On April 11, 2008 appellant, through his attorney, requested reconsideration and submitted additional reports from Dr. Rosacker dated April 13 to 27, 2007. He advised that appellant's carpal tunnel and cervical facet symptoms continued and that he remained totally disabled. On May 25, 2007 Dr. Rosacker reported that appellant was unchanged but he could

return to sedentary work with breaks every 30 to 45 minutes, with a five-pound right upper extremity lifting restriction and no overhead reaching, climbing, pushing or pulling. On June 11, 2007 he again advised that appellant was totally disabled. On June 15, 2007 Dr. Rosacker reiterated that appellant should consider left carpal tunnel decompression surgery. A June 28, 2007 EMG and NCS demonstrated mild or early left carpal tunnel syndrome with no finding of ulnar neuropathy. Left carpal tunnel surgery was authorized on July 20, 2007 and the procedure was performed on August 28, 2007. In reports dated August 30 through October 8, 2007, Dr. Rosacker noted appellant's progress following surgery. On October 22, 2007 he reported that appellant had pain in the right cervical area and hand. On November 5, 2007 appellant had intermittent left median nerve neuritis suggestive of medial epicondylitis. On November 16, 2007 Dr. Rosacker advised that appellant was increasingly symptomatic with dyesthesia pain in both hands. He recommended pain management. In an April 1, 2008 report, Dr. Rosacker advised that, although appellant was released for light duty on October 13, 2006, this was not available. He remained symptomatic with median nerve involvement and left carpal tunnel syndrome and was unable to work. Dr. Rosacker stated that appellant's median neuritis was a residual of his carpal tunnel syndrome and that he remained totally disabled. On April 10, 2006 he diagnosed bilateral carpal tunnel syndrome with right cervical facet arthropathy, checking a form box "yes" indicating that this was caused or aggravated by employment activity, stating, "repetitive work activities in federal employment directly caused diagnosed conditions." Dr. Rosacker advised that appellant was totally disabled from May 6, 2006 to the present and recommended pain management and a functional capacity evaluation. He continued to submit reports reiterating his findings and conclusions. A May 20, 2008 functional capacity evaluation was reported as not reliable, suggestive of inconsistent physical effort and indicating that appellant could do more than was demonstrated.

By decision dated June 26, 2006, the Office denied modification of the April 12, 2007 decision, finding that the medical evidence submitted was insufficient to establish that appellant was entitled to additional disability compensation for the period June 16, 2006 to April 12, 2007.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,¹ the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act³ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁴ Whether a particular injury

¹ 5 U.S.C. §§ 8101-8193.

² See *Prince E. Wallace*, 52 ECAB 357 (2001).

³ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁴ *Donald E. Ewals*, 51 ECAB 428 (2000).

causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.⁷

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

When appellant stopped work on June 16, 2006, he was performing limited-duty estimating and planning small construction projects and was no longer performing duties as a grounds keeper. Regarding the period June 16 to July 17, 2006, Dr. Rosacker advised that appellant was totally disabled and recommended right carpal tunnel surgery. He, however, did not address the job requirements of appellant's limited-duty position or provide a rationalized explanation as to why he could not perform such light-duty work. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹¹ Dr. Rosacker's opinion is therefore insufficient to establish that appellant was totally disabled for this period.

⁵ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

⁶ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ See *Albert C. Brown*, 52 ECAB 152 (2000).

Appellant underwent surgery on July 18, 2006 and received compensation until October 13, 2006 when Dr. Rosacker reported that he could return to light duty. Although Dr. Rosacker later advised that light duty was not available, there is nothing in the record to support this assertion as factual and appellant never returned to work. On October 16, 2006 he reported minimal carpal tunnel symptoms but increased cervical pain. Dr. Rosacker recommended that cervical facet arthropathy be added to appellant's accepted conditions. He advised that appellant again became totally disabled on October 27, 2006 due to increased upper symptoms with neck, right shoulder and arm pain and provided disability slips finding that he was totally disabled through April 13, 2007. The Board finds Dr. Rosacker provided insufficient medical rationale to establish that appellant was totally disabled due to his accepted condition from October 14, 2006 to April 12, 2007. While Dr. Rosacker suggested that cervical facet arthropathy be added to the accepted conditions medical evidence does not address the relationship of this diagnoses to the accepted carpal tunnel claim or that the Office has issued a final decision regarding whether this condition was consequential to the accepted claim.¹² He again did not address the job requirements of appellant's limited-duty position or provide a rationalized explanation as to how appellant was precluded from performing limited duty.

Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.¹³ Dr. Rosacker's reports do not provide sufficient rationale to support that appellant was disabled from his light-duty job for the periods June 16 to July 17, 2006 or October 14, 2006 to April 12, 2007. Appellant therefore did not meet his burden of proof.¹⁴

CONCLUSION

The Board finds that appellant did not establish that he was totally disabled for the periods June 16 to July 17, 2006 and October 14, 2006 to April 12, 2007.

¹² The Board's jurisdiction is limited to reviewing final decisions of the Office. 20 C.F.R. § 501.2(c); *Karen L. Yaeger*, 54 ECAB 323 (2003).

¹³ *Albert C. Brown*, *supra* note 11.

¹⁴ *Conard Hightower*, 54 ECAB 796 (2003). The Board notes that left carpal tunnel surgery was authorized on July 20, 2007 and the procedure was performed on August 28, 2007. The Office, however, has not issued a final decision addressing any period of claimed disability subsequent to April 12, 2007. *See supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT that the June 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board